

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Technical and Administrative Support

4 (Amendment)

5 418 KAR 1:050. Procedures for acquisition of land.

6 RELATES TO: KRS 45.450, 146.550-146.570, 382.800-382.860

7 STATUTORY AUTHORITY: KRS 146.560(2), 146.565

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to
9 promulgate administrative regulations on acquisition. This administrative regulation governs the
10 acquisition of land purchased, in whole or in part, with Fund money.

11 Section 1. An applicant shall attempt to acquire:

12 (1) Land at a price below its fair market value; and

13 (2) Available matching funds for the purchase of land from a public or private entity.

14 Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed
15 promptly after a Memorandum of Agreement has been signed by the grant applicant and the board
16 and all procedures in 418 KAR 1:040 and in the application have been followed.

17 Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years
18 of board approval of the acquisition. An extension may be granted by the board upon receipt of a
19 written request for extension.

20 Section 4. Verification. (1) Within ninety (90) days of purchase, a recipient of fund money
21 shall provide to the board, a copy of the recorded deed of conveyance for land acquired.

1 (2) The deed shall:

2 (a) Indicate that it has been filed of record in the courthouse of the county where the real
3 estate is located; and

4 (b) Indicate the amount of consideration paid for the real estate, in accordance with KRS
5 45.450.

6 Section 5. Deed Restriction. A state agency that has been awarded grant funds pursuant to
7 KRS 146.570(4) shall include in all deeds conveying ownership of property to that agency, as
8 grantee, the following language: "Grantor and grantee hereby acknowledge that a source of
9 funding for the purchase of the property is the Kentucky Heritage Land Conservation Fund, and
10 that as consideration for receiving said funding, Grantee, including its successors and assigns, is
11 required to maintain the property in perpetuity in accordance with the purpose, intent and
12 requirements of the Kentucky Heritage Land Conservation Fund set forth at KRS 146.570 and 418
13 KAR Chapter 1. Grantee, including its successors and assigns, further acknowledges that it is
14 prohibited from selling, exchanging, encumbering or disposing of any interest in the property
15 without the prior written consent of the Kentucky Heritage Land Conservation Fund, its successors
16 and assigns, and the Kentucky Finance and Administration Cabinet, and that the Grantee, including
17 its successors and assigns, shall ensure that any future owner of the property agrees in writing to be
18 bound in perpetuity to the same restrictions and terms as stated herein."

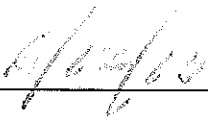
19 Section 6. Conservation Easements. (1) A local government, state college, [or] state
20 university, or LTO that has been awarded grant funds pursuant to KRS 146.570(4)(f) shall convey
21 to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in
22 whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the
23 conveyance of the property to the applicant. The conservation easement shall meet the

1 requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in
2 perpetuity for the purposes set out in KRS 146.560.

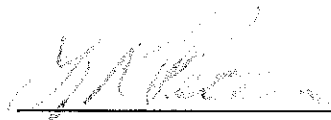
3 (2) Matching Funds. (a) No later than ninety (90) days after Board approval of an
4 application from an LTO, the applicant shall deposit into a non-lapsing escrow account the
5 matching funds required by KRS 146.560(2)(d).

6 (b) A LTO shall submit to the Board for review and approval instructions to the escrow
7 holder of each dollar-for-dollar match, and shall ensure in writing that the escrow account stays
8 open for a long enough period of time to allow for withdrawals and disbursements to be made
9 after board approval.

418 KAR 1:050 approved for filing.
Pages (1-3)



Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2013 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing July 18, 2013, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator
#2 Hudson Hollow
Frankfort, KY 40601
Telephone: (502) 564-6940 Fax (502) 564-5698
Email: Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 418 KAR 1:050

Contact Person: Michael Mullins, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the acquisition of land purchased, in whole or in part, with Fund money.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on the acquisition of land purchased with fund money and also provides information on the how the funds will be transferred as well as information related to deed restrictions and conservation easements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the Board to promulgate administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by governing the acquisition of lands purchased in whole or in part with fund money.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment introduces procedures for private, nonprofit land trust organizations to follow in order to set up and manage escrow accounts which is required in order to meet the dollar for dollar match required in KRS 146.560.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide private, nonprofit land trust organizations the necessary information for meeting the dollar for dollar match required by statute.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the new requirements of KRS 146.560 by providing the method for private, nonprofit land trust organizations to meet the dollar for dollar match requirement.

(d) How the amendment will assist in the effective administration of the statutes: This amendment requires private, nonprofit land trust organizations to use escrow accounts to make the dollar for dollar match.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact private, nonprofit land trust organizations that are interested in applying for grants from the Heritage Land Conservation Fund.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires private, nonprofit land trust organizations to set up escrow accounts to make the dollar for dollar match required by KRS 146.560.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost the regulated entity an additional amount to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private, nonprofit land trust organizations could receive grants from the HLCF.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment will not cost the administrative body additional funds to implement.

(b) On a continuing basis: This amendment will not cost the administrative body additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding to administer the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All applicants for grant funding will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 418 KAR 1:050

Contact Person: Michael Mullins, Regulation Coordinator

Phone number: (502) 564-6940

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate funds for use by the cabinet.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate funds for use by the cabinet on a continuing basis.

(c) How much will it cost to administer this program for the first year? There are no additional costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA